

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 169/90
~~X.O.A. No.~~

~~199~~

DATE OF DECISION 12-7-1991

TN Viswanathan Pillai Applicant (s) ✓

Mr M. Rajagopalan Advocate for the Applicant (s) ✓

Versus

Divisional Personnel Officer, Respondent (s)
Southern Railway, Trivandrum Division,
Trivandrum and others.

Mrs Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Shri NV Krishnan, A.M

The applicant is reemployed as Commercial Clerk Gr.III in the Southern Railway. His grievance is that his pay on re-employment to this post has not been fixed properly.

2 The applicant was employed in the Air Force till 31.7.84 when he was discharged. The last pay drawn by him was Rs 465. On discharge, he was granted pension of Rs 280.

3 He was reemployed in the Railways on 25.8.86 as a Commercial Clerk in the pay scale of Rs 260-430, which was revised with effect from 1.1.86 to Rs 975-1540. His pay on the revised pay scale has been fixed at the minimum of Rs 975/- with effect from 25.8.86.

4 The applicant is aggrieved by fixing his pay at the minimum of the pay scale. He submits that in the case of reemployed pensioners, the pay in the reemployed post should be so fixed that it protects the last pay drawn by him at the time of retirement. He contends that if the pay is fixed at the minimum of the pay scale and it is found that it is less than the emoluments drawn at the time of retirement, it should be considered that there is a hardship. In that event, the pay should be stepped up by granting him sufficient number of annual increments for each year of service rendered before retirement, on posts comparable to the post on which he is now reemployed such that, the pay on reemployment becomes equal to the pay drawn at the time of retirement and there is no more hardship. He submits that for the purpose of finding out whether there is any hardship, the pension of Rs 280/- p.m. drawn by him should also be ignored in terms of the O.M. dated 8,2,83. He submits that his total emoluments at the time of retirement amounted to Rs 1186.60 as admitted in para-5 of the counter affidavit. He, therefore, contends that his pay should be suitably stepped up as stated above and the last pay drawn by him should be protected.

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5 The respondents have denied that any relief is due to the applicant. It is submitted that the applicant was reemployed on 25.8.86. Pensioners who have been reemployed on and after 1.7.86 are governed by the Central Civil Services (Fixation of pay of reemployed pensioners) Orders, 1986 (Order, for short) in the matter of fixation of their pay. Admittedly, the pay of the applicant has been fixed without taking into account the pension drawn by him as required in the Railway Board's letter dated 16.6.83 which states that in the case of personnel below Commissioned Officers' rank, the entire pension should be omitted for fixation of pay. Therefore, the pay is fixed under para-4(b)(i) of the Order which states that in all cases where the pension is fully ignored, the initial pay of reemployed pensioners shall be fixed at the minimum of the scale of reemployed post. It is, therefore, submitted that the applicant's case is fully covered by the provision of this Order and his pay has rightly been fixed at the minimum and he is not entitled to any relief.

6 We have heard the learned counsel for both the parties and perused the records. We are of the view that the contention of the respondents has to be accepted.

The provision of the Order at para 4(b)(i) is ~~un~~ambiguous and does not contemplate fixation above the minimum.

It has only to be added that it is only if the entire pension is not ignored for pay fixation that protection of the last pay drawn, to the extent possible, is provided for vide Clause (ii) of para 4(b) of the Order. Further, para 4(d) stipulates the circumstances in which the pension, including pension equivalent of gratuity and other forms of retirement benefits, shall be ignored for fixation of pay as well as the quantum that shall be ignored. In the applicant's case his pension has to be fully ignored not under the 1983 O.M. cited by the parties, but because of the provisions of ~~para 4~~ Clause(ii) of para 4(d) of the Order. Therefore, the applicant's case is squarely covered by clause (i) of sub-para(b) of Para 4 of the Order. He is an ex-service man who held the post below Commissioned Officer's rank at the time of retirement and therefore, the entire pension is required to be ignored as stated above and his pay fixed at the minimum under this clause.

7 In this view of the matter, we hold that the applicant's pay has rightly been fixed in accordance with the provisions of para 4(b)(i) of the Order and

12

that this fixation cannot be assailed.

8 For the aforesaid reasons, we do not find
any merit in this application and it is dismissed.

There will be no order as to costs.

N. Dharmadan
12.7.91
(N Dharmadan)
Judicial Member

NV Krishnan
12/7/91
(NV Krishnan)
Administrative Member

12-7-1991